

SIKKIM

GOVERNMENT GAZETTE



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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No.6/LD/P/14

Date: 27.2.2014

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on 27th day of February, 2014 is hereby published for general information:-

THE SIKKIM LOKAYUKTA ACT, 2014 (ACT NO. 6 OF 2014)

AN
ACT

to provide for the establishment of a body of Lokayukta for the State of Sikkim to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

BE it enacted by the Legislature of Sikkim in the Sixty-fifth Year of the Republic of India, as follows:-

CHAPTER-I PRELIMINARY

Short title, extent, application and commencement	1.	(1) This Act may be called the Sikkim Lokayukta Act, 2014. (2) It extends to the whole of the State of Sikkim. (3) It shall be applicable to the public servants of the State of Sikkim serving in and outside the State and the public servants under the control of Government of Sikkim. (4) It shall come into force on such date as the Government may, by notification, appoint.
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Definitions.

2. (1) In this Act, unless the context otherwise requires, -

- (a) "Chairperson" means the Chairperson of the Lokayukta;
- (b) "competent authority", in relation to -
 - (i) the Chief Minister, means the Legislative Assembly of the State;
 - (ii) a member of the Council of Ministers, means the Chief Minister;
 - (iii) a member of State Legislative Assembly other than a Minister, means the Speaker of the Legislative Assembly;
 - (iv) an officer in any Department of the Government, means the Minister-in-charge of the Department under which such officer is serving;
 - (v) a Chairperson or member of any Body or Board or corporation or Local authority or company or society or autonomous Body (by whatever name called) established or constituted under any Act of the Legislature of the State or wholly or partly financed by the Government or controlled by it, means the Minister-in-charge of the Department of such body or board or corporation or authority or company or society or autonomous body;

Provided that if such Chairperson or member is also a member of the State Legislative Assembly, then the competent authority shall be the Speaker of the Legislative Assembly;

- (vi) an officer of any body or board or corporation or Local authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of the Legislature of the State or wholly or partly financed by the Government or controlled by it, means the head of such Body or Board or corporation or authority or company or society or autonomous body; and
- (vii) any other case not failing under sub-clauses (i) to (vi) above, means such Department or authority as the Government may, by notification, specify;

- (c) "complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988; -
- (d) "Government" means the Government of Sikkim;
- (e) "investigation" means an investigation as defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973;
- (f) "Judicial Member" means a Judicial Member of the Lokayukta;
- (g) "Lokayukta" means the body established under section 3;
- (h) "Member" means a Member of the Lokayukta;
- (i) "Minister" means Minister of the Government but does not include the Chief Minister;
- (j) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
- (k) "preliminary inquiry" means an inquiry conducted under this Act;
- (l) "prescribed" means prescribed by rules;

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(m) "public servant" means a person referred to in clauses (a) to (h) of sub-section (1) of section 13 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or the procedure is applicable to such public servant under those Acts;

(n) "regulations" means regulations made under this Act;

(o) "rules" means rules made under this Act;

(p) "Special Court" means the court of a Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988;

(q) "State" means the State of Sikkim.

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(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988 and in the Code of Criminal Procedure, 1973, shall have the meanings respectively assigned to them in those Acts.

CHAPTER-II

ESTABLISHMENT OF LOKAYUKTA

Establishment of Lokayukta

3. (1) After the commencement of this Act, the Government shall, by notification, establish, for the purpose of this Act, an establishment called the Lokayukta for the State of Sikkim.

(2) The Lokayukta shall consist of –

- (a) a Chairperson, who has been Chief Justice of a High Court; and
- (b) two Members, one of whom shall be a Judicial Member.

(3) A person shall be eligible to be appointed,-

- (a) as a Judicial member if he or she has been a District Judge;
- (b) as a Member if he or she is a person having wide experience and knowledge in the matters relating to administration, finance, law, inquiry proceedings etc. having held position in the State Government not below the rank of Secretary for at least five years.

(4) The Chairperson or a Member shall not be –

- (a) a member of Parliament or a member of the Legislature of any State or Union Territory;
- (b) a person convicted of any offence involving moral turpitude;
- (c) a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be;
- (d) a member of any Panchayat or Municipality;
- (e) a person who has been removed or dismissed from service of the Union or a State; or
- (f) a person holding any office of trust or profit (other than his office as the Chairperson or a Member) or person connected with any political party or carry on any business or practice any profession, and

Appointment of Chairperson and Members on recommendation of Selection Committee.

accordingly, before he enters upon his office, as the Chairperson or a Member, as the case may be, shall, if-

- (i) he holds any office of trust or profit, resign from such office; or
- (ii) he is carrying on any business, sever his connection with the conduct and management of such business;- or

4.(1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal after obtaining the recommendations of a Selection Committee consisting of –

- (a) the Chief Minister – Chairperson;
- (b) the Chief Justice of the High Court of Sikkim;
- (c) the Speaker of the Legislative Assembly – Member;
- (d) the Leader of Opposition in the Legislative Assembly. If there is no leader of the opposition, then the senior most member of the Legislative Assembly - Member;
- (e) an eminent person from the State as may be nominated by the Governor;

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of absence of any Member in the Selection Committee.

(3) The Selection Committee shall select the names of the Chairperson and Members of the Lokayukta by majority of the members present in the meeting for selection.

(4) The Selection Committee may adopt such procedure for the purpose of selection and recommendation as it deems appropriate.

(5) The meeting of the Selection Committee shall be convened by the Chief Secretary of the State in consultation with the Chairperson and the recommendations of the Selection Committee shall be forwarded by the Chief Secretary to the Governor.

(6) The Chief Secretary of the State shall provide necessary assistance to the Selection Committee as may be requested.

Term of Office of Chairperson and Members.

5. The Chairperson and every Member shall, hold office as such for a term of five years from the date on which he enters upon his office:

Provided that he may, -

- (a) by writing under his hand addressed to the Governor, resign his office; or
- (b) be removed from his office in the manner provided in section 30.

6. The Governor, on receipt of the recommendations of the Selection Committee, shall issue the warrant of appointment appointing the Chairperson and Members of the Lokayukta within a period of seven days.

Salary, allowances and other conditions of service of Chairperson and Members

7. The salary, allowances and other conditions of service of -

- (a) the Chairperson shall be the same as those of the Chief Justice of the High Court of Sikkim;
- (b) other Members shall draw salary in their respective grade which they were last drawing :

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of or has become entitled to receive pension (other than disability pension) in respect of any service or previous service under the Government of India or under the Government of a State or as Chief Justice or as the case may be, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced –

- (i) by the amount of that pension; and
- (ii) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension;

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

Member to act as Chairperson or to discharge his functions in certain circumstances.

8. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorize the senior-most Member to temporarily act as the Chairperson until the appointment of a new Chairperson is made to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the Governor may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary, other officers and staff of Lokayukta

9. (1) There shall be a Secretary to the Lokayukta who is or has been in the rank of Secretary to the Government to be appointed by the Chairperson from among a panel of names sent by the State Government.

(2) There shall be an Inspector of Inquiry and a Public Prosecutor, who shall be appointed by the Chairperson, as may be prescribed.

(3) The appointment of officers and staff of the Lokayukta shall be made by the Chairperson or by the Secretary in-charge of the Lokayukta on being delegated by the Chairperson:

(4) The staff required for the functioning of the Lokayukta shall be provided by the State Government.

(5) Subject to the provisions of any law made by the Legislature of the State the conditions of service of Secretary and other officers and staff of the Lokayukta shall be such as may be prescribed.

CHAPTER-III

INQUIRY WING

Inquiry Wing

10. (1) The Lokayukta shall constitute an Inquiry Wing headed by the Inspector of Inquiry for the purpose of conducting preliminary inquiry as per procedure into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the Government shall make available such number of officers and other staff from

such of its Departments, as may be required by the Lokayukta, for conducting preliminary inquiry under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing headed by Inspector of Inquiry, shall have the same powers as are conferred upon the Lokayukta under Section 21.

CHAPTER-IV PROSECUTION WING

**Prosecution
Wing**

11. (1) The Lokayukta shall, by notification, constitute a Prosecution Wing headed by a Public Prosecutor for the purpose of prosecution of public servants as per the procedure in relation to any complaint made before the Lokayukta under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokayukta, the Government shall make available such Inspectors, Public Prosecutors and other staff and officials, as may be required.

(2) The Public Prosecutor shall, after having been so directed by the Lokayukta, file a case as per the procedure in accordance with the findings of the investigation report as per sub-section (6) of Section 14, before the Special Court, and shall take all necessary steps as per the procedure in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

(3) The report under sub-section (2) shall be deemed to be a report, filed on completion of investigation, referred to in Section 173 of the Code of Criminal Procedure, 1973.

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CHAPTER-V EXPENSES OF LOKAYUKTA TO BE CHARGED ON THE CONSOLIDATED FUND OF THE STATE

**Expenses of
Lokayukta to
be charged on
the
Consolidated
Fund of the
State**

12. The administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of the State and any fees or other moneys taken by the Lokayukta shall form part of that Fund.

CHAPTER-VI JURISDICTION IN RESPECT OF INQUIRY

**Jurisdiction of
Lokayukta to
include Chief
Minister,
Ministers,
Members of
Legislature,
officers and
employees of
the State**

13. (1) Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted as per the procedure into any matter involving, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:-

- (a) any person who is or has been a Chief Minister;
- (b) any other person who is or has been a Minister of the State;

(c) any person who is or has been a Member of the Sikkim Legislative Assembly;

(d) any person who is Chairperson or a member by whatever name called, of a Panchayat or a Municipality as respectively provided in Articles 243-B and 243-Q of the Constitution of India;

(e) any officer or employee of the State, referred to in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State;

(f) any officer or employee referred to in clause (e) or holding equivalent post in any Body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by any Act of Parliament or of a State Legislature which is wholly or partly financed by the Government or controlled by it;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Government may, by notification, specify;

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the Government may, by notification, specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify:

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Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involving or arising from, or connected with, any such allegation of corruption against any Member of the Sikkim Legislative Assembly in respect of anything said or a vote given by him in the said Assembly or any committee thereof covered under the provisions contained in clause (2) of Article 194 of the Constitution of India.

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(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of bribe giving or bribe taking or abetting the same or in conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1);

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government.

(4) No cognizance of a complaint shall be taken if it discloses that the offence as alleged was committed by a public servant while he was holding the office if the allegation of offence relates to a period which is more than five years old from the date of the complaint.

CHAPTER-VII
PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

**Provisions
relating to
complaints and
preliminary
inquiry and
investigation**

14. (1) The Lokayukta, on receipt of a complaint, if it decides to proceed further, may order -

- (a) preliminary inquiry against any public servant by its Inquiry Wing or any agency to ascertain whether there exists a *prima facie* case for proceeding in the matter; or
- (b) investigation by any agency or authority empowered under any law to investigate, where there exists a *prima facie* case:

Provided that any investigation under this clause shall be ordered only if in the opinion of the Lokayukta there is substantial material relating to the existence of a *prima facie* case or any earlier statutory investigation or enquiry regarding the same complaint reveals that a *prima facie* case exists:

Provided further that before ordering an investigation under this clause, the Lokayukta shall call for the explanation of the public servant and views of the competent authority, so as to determine whether there exists a *prima facie* case for investigation:

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected, seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokayukta.

(3) The Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists a *prima facie* case, and make recommendations to proceed with one or more of the following actions, namely:-

- (a) investigation by any agency (including any special investigation agency);
- (b) initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority;
- (c) closure of the proceedings against the public servant and take action to proceed against the complainant under Section 36.

(4) The promotion and other service benefits of a public servant mentioned in clauses (e) to (h) of sub-section (1) of section 13 shall be dealt with as per the provisions of law applicable to such cases.

(5) Every preliminary inquiry referred to in sub-section (1) shall be completed within a reasonable period, as may be specified.

(6) In case the Lokayukta decides to proceed to investigate into the complaint, it shall, by order in writing, direct any investigating agency (including any special agency) to carry out the investigation within such period, as may be specified therein and submit report.

(7) Any investigating agency (including any special agency) shall, in respect of cases referred to it by the Lokayukta, submit the investigation report to the Lokayukta.

(8) The Lokayukta shall consider every report received by it under sub-section (7) from any investigating agency (including any special agency) and may, decide as to –

- (a) filing of charge-sheet or closure report before the Special Court against the public servant; or
- (b) initiating the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

(9) The Lokayukta may, after taking a decision under sub-section (8) on the filing of the charge-sheet, direct its Prosecution Wing to initiate prosecution as per the procedure in a Special Court in respect of cases investigated by any investigating agency (including any special agency) or may forward the report to the concerned Wing of the State Government for prosecution with a further direction to pursue the matter in the Special Court and intimate the Lokayukta from time to time about the progress and outcome of the prosecution :

Provided that where the Lokayukta chooses to forward the findings to a prosecuting agency of the State Government for filing a case in the Special Court, such agency shall comply with the direction of the Lokayukta without fail and in the event of default or negligence on the part of the prosecuting agency, its official shall be liable to such disciplinary action as may be directed in this behalf.

(10) The Lokayukta may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to preliminary inquiry or, as the case may be, investigation, as it deems fit.

(11) The Lokayukta shall maintain the record of such documents in such manner as it may direct.

(12) The Lokayukta may retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(13) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

**Persons likely
to be
prejudicially
affected to be
heard**

15. If, at any stage of the proceeding, the Lokayukta –

- (a) considers it necessary to inquire into the conduct of any person other than the accused; or
- (b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

it shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

**Lokayukta
may require
any public
servant or
any other
person to
furnish
information,
etc.**

16. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

17. (1) A Special Court may, on filing of a charge sheet on completion of investigation, by the Lokayukta or any officer authorized by it in this behalf, take cognizance of offence committed by any public servant.

(2) Nothing contained in sub-section (1) shall apply in respect of the persons holding the office in pursuance of the provisions of the Constitution of India and in respect of which a procedure for removal of such person has been specified therein.

(3) The provisions contained in sub-sections (1) and (2) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of clause (3) of Article 320 of the Constitution of India.

18. (1) Where, after the conclusion of the investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 13, the Lokayukta may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority or may forward the findings of the Lokayukta to the concerned prosecuting agency of the State Government with a direction to pursue the matter in the Special Court and send report to the Lokayukta on the status and outcome of the prosecution from time to time.

19. (1) The Lokayukta shall have the powers of superintendence and direction over the investigating agency in respect of the matters in so far as they relate to the investigation made by such agency under this Act.

(2) The investigating agencies in the State shall henceforth function under the supervision and direction of the Lokayukta in so far as it relates to offences under the Prevention of Corruption Act, 1988, being investigated by the Lokayukta.

20. (1) If the Lokayukta has reasons to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, is concealed in any place, it may authorize any agency to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokayukta is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any preliminary inquiry or investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorized, it may so retain or direct such authorized officer to retain such document till the completion of such preliminary inquiry or investigation as the case may be:

Provided that where any document is required to be returned, the Lokayukta or the authorized officer may return the same after retaining copies of such document duly authenticated in the manner as may be prescribed.

21. (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:-

- (i) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidence on affidavits;
- (iv) requisitioning any public record or copy thereof from any court or office;
- (v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and

- (vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code, 1860.

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**Power of the
Lokayukta to
utilize services of
officers of the
Government**

22. (1) The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilize the services of any officer or organization or investigation agency of the Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organization or agency whose services are utilized under sub-section (1) may, subject to the superintendence and direction of the Lokayukta, -

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The officer or organization or agency whose services are utilized under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

**Provisional
attachment of
assets**

23. (1) Where the Lokayukta or any investigating officer authorized by it in this behalf, has reasons to believe, which shall be recorded in writing, on the basis of material in his possession, that -

- (a) any person is in possession of any proceeds of corruption;
- (b) such person is accused of having committed an offence relating to corruption; and
- (c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

the Lokayukta or the investigating officer, may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner as provided in the Second Schedule to the Income-tax Act, 1961 and the Lokayukta and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

(2) The Lokayukta shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as

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may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

Explanation. – For the purpose of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation of attachment of assets

24. (1) The Lokayukta, when it provisionally attaches any property under sub-section (1) of section 23 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

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Explanation. - For the purposes of this sub-section, the expressions “Bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances

25. (1) The Special Court, on the basis of *prima facie* evidence, has reasons to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may pass an order for the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with the interest from the date of confiscation at the rate as may be prescribed.

Power of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption

26. (1) Where the Lokayukta, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available that the continuance of the public servant, referred to in clauses (e) to (h) of sub-section (1) of section 13, in his post is likely to affect such preliminary inquiry adversely or is likely to destroy, or in any way tamper with, the evidence or influence witnesses, then, the Lokayukta may recommend to the Government for transfer or suspension of such public servant till such period as may be specified in the order.

(2) The Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons.

Power of the Lokayukta to give directions to prevent destruction of records during preliminary inquiry.

27. The Lokayukta may, in discharge of its functions under this Act, issue appropriate direction to a public servant entrusted with the preparation or custody of any document or record -

- (a) to protect such document or record from destruction or damage; or
- (b) to prevent the public servant from altering or secreting such document or record; or
- (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power to delegate.

28. The Lokayukta may, by general or special order in writing and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by the Secretary to the Lokayukta.

CHAPTER-IX SPECIAL COURTS

Special Courts to be constituted by the Government

29. Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act 1988 shall be the Special Court under this Act.

CHAPTER-X COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF THE LOKAYUKTA

Removal of Chairperson and Members

30. (1) The Lokayukta shall not inquire into any complaint or allegation of corruption made against the Chairperson or any Member.

(2) All allegations of corruption against Chairperson or Member of the Lokayukta shall be taken up and discussed and debated by a motion in the State Legislative Assembly which shall be preceded by submission of a report by a fact finding Committee appointed by the State Legislative Assembly for the said purpose :

Provided that no such motion or discussion shall take place in the State Legislative Assembly unless the person against whom complaint has been made, has been given an opportunity of being heard on the complaint.

(3) Upon such discussion, a motion shall be taken up for consideration by the House of the State Legislative Assembly and voting shall take place either in favour of the motion or rejecting the motion.

(4) Where the motion is accepted, the Speaker shall send a report to this effect to the Governor who shall thereafter issue order removing such Chairperson or the Member, as the case may be, under his hand and seal.

(5) Notwithstanding anything contained hereinabove, the Governor may, by order, remove from the office, the Chairperson or any Member, if the Chairperson or such Member, as the case may be,-

- (a) is adjudged an insolvent; or
- (b) engages himself during his term of office, in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in anyway concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

**Complaints
against
officials of
Lokayukta**

31. (1) Every complaint or allegation made against any officer or employee or agency under, or associated with, the Lokayukta for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

(2) The Lokayukta shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokayukta or agency engaged or associated with the Lokayukta, if it is prima facie satisfied on the basis of evidence available, that continuance of such officer or employee of the Lokayukta or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely or is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokayukta may, by order, suspend such officer or employee of the Lokayukta or divest such agency engaged or associated with the Lokayukta of all powers and responsibilities hereto before exercised by it.

(4) On completion of the inquiry, if the Lokayukta is satisfied that there is prima-facie evidence of the commission of an offence under the Prevention of Corruption Act, 1988, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokayukta or such officer, employee, agency engaged or associated with the Lokayukta and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokayukta, or agency so engaged or associated, a reasonable opportunity of being heard.

CHAPTER-XI **FINANCE ACCOUNT AND AUDIT**

32. The Financial requirement of the Lokayukta, Budget, Accounts, etc. including audit shall be dealt by the Lokayukta in such manner, as may be considered expedient. For the purpose of proper audit, the Lokayukta shall maintain proper account which shall be audited by the official of the Accountant General, Sikkim.

Furnishing of returns etc., to Government

33. The Lokayukta shall furnish to the Government, at such time and in such form and manner as may be prescribed or as the Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokayukta, as the Government may, from time to time, require.

CHAPTER-XII **DECLARATION OF ASSETS**

Declaration of assets

34. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to –

- (a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;
- (b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2), to the competent authority within ninety days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the thirty-first July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the thirty-first March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each Department shall maintain the records of such statements in such manner as may be provided under law.

Explanation.- For the purposes of this section, "dependent children" means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

False information to be dealt as per law

35. If any public servant willfully or for reasons which are not justifiable, fails to declare his asset or gives misleading or false information in respect of such assets, in such cases he shall be dealt with as per provisions of law.

CHAPTER-XIII

OFFENCES AND PENALTIES

**Prosecution for
false complaint
and payment of
compensation,
etc., to public
servant**

36. (1) Whoever makes any false or frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorized by the Lokayukta.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Government.

(5) In case of conviction of a person being an individual or society or association of persons or trust (whether registered or not) for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

Explanation.- For the purpose of this sub-section, the expression "good faith" means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under section 79 of the Indian Penal Code, 1860.

**False
complaint
made by
society or
association of
persons or**

37. (1) Where any offence under sub-section (1) of section 36 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer of the society shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER-XIV

MISCELLANEOUS

Reports of Lokayukta

38. It shall be the duty of the Lokayukta to present annually to the Governor a report on the work done by the Lokayukta and on receipt of such report the Governor shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokayukta was not accepted, the reason for such non-acceptance to be laid before the Sikkim Legislative Assembly.

Protection of action taken in good faith by any public servant

39. No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of action taken in good faith by others

40. No suit, prosecution or other legal proceedings shall lie against the Lokayukta or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

Members, officers and employees of Lokayukta to be public

41. The Chairperson, Members, officers and other employees of the Lokayukta shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

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Power to make rules

42. The Government may, by notification, make rules to carry out the provisions of this Act.

Separate Establishment

43. (i) The Lokayukta shall be a separate establishment having its own logo and seal and the conditions of service of its staff and officers shall be such as may be prescribed by Lokayukta and notification to this effect shall be issued by the State Government.

Power to make regulations

(ii) Subject to the provisions of this Act and the rules made thereunder, the Lokayukta may, by notification, make regulations to carry out the provisions of this Act.

Power to remove difficulties.

44. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before the Sikkim Legislative Assembly.

Transitory provision.

45. On the coming into force of this Act and the Lokayukta being constituted, any allegation of corruption pending inquiry before the Vigilance Wing of the State Government or any other body or authority or Commission of Inquiry, constituted under Commission of Inquiry Act 1952, shall stand transferred to the Lokayukta constituted under this Act to be dealt with in accordance with the provisions of this Act.

Repeal

46. The Sikkim Lokayukta Act, 2012 is hereby repealed.

Mrs. Lakchung Sherpa, SSJS
L. R -cum-Secretary
Law department

